

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FILED  
U.S. DISTRICT COURT  
2014 NOV 20 AM 11:54  
S.D. OF N.Y.M.P.

-----X  
JUDITH WATTS-DEVINE, as Administratrix of the  
Estate of FRANCIS J. DEVINE, and  
JUDITH WATTS-DEVINE, Individually,

Plaintiffs,

-against-

UNITED STATES OF AMERICA,

Defendant.

14 CIV. 9222

JUDGE BRICCETTI  
-----X

Plaintiffs, through their attorneys, Kelly & Meenagh, LLP, upon information and belief,  
allege the following:

**SUBJECT MATTER JURISDICTION AND VENUE**

1. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. 1346(b) and 1367(a).
2. Venue is proper pursuant to 28 U.S.C. 139(e) in that this is an action against the United States of America and agents thereof reside in the County of Dutchess because the acts and omissions alleged occurred within the Southern District of New York and Plaintiff resides in Poughkeepsie, New York.

**THE PARTIES**

3. Plaintiff's Decedent, Francis J. Devine, died on November 25, 2012.
4. Judith Devine is an adult over the age of eighteen (18) and is the Administratrix of the Estate of Francis J. Devine.
5. Plaintiff resides at 5 Ruby Circle, Poughkeepsie, NY 12603.
6. At all times hereinafter mentioned, VETERAN'S ADMINISTRATION

HUDSON VALLEY HEALTH CENTER (hereinafter referred to as "VA HEALTH CENTER"), was a duly constituted department and entity of the UNITED STATES OF AMERICA.

7. At all times hereinafter mentioned Defendant, UNITED STATES OF AMERICA, owned, operated, managed and funded Defendant VA HEALTH CENTER.

8. At all times Defendant VA HEALTH CENTER has a principal place of business located at VA Hudson Valley Health Center, Route 9D, Castlepoint, NY 12511.

9. At all the times hereinafter mentioned, the Defendant GERMAN CHU-ACQUINO, hereinafter referred to as "CHU-ACQUINO", was a physician licensed to practice medicine and practicing medicine in the State of New York.

10. At all the times hereinafter mentioned, the defendant, CHU-ACQUINO, was an employee of the defendant, UNITED STATES OF AMERICA.

11. At all the times hereinafter mentioned, the defendant, CHU-ACQUINO, was an employee of the defendant, VA HEALTH CENTER.

12. In February 2010, Plaintiff's Decedent, FRANCIS J. DEVINE, was a patient of Defendant UNITED STATES OF AMERICA.

13. In February 2010, Plaintiff's Decedent FRANCIS J. DEVINE, was a patient of Defendant VA HEALTH CENTER.

14. On or about August 27, 2010, Plaintiff's Decedent FRANCIS J. DEVINE was diagnosed with cecal cancer.

15. This action falls within one or more exceptions set forth in the Civil Practice Laws and Rules Section 1602.

**FEDERAL TORT CLAIMS ACT (FTCA) ADMINISTRATIVE PROCEDURE**

16. On or about September 16, 2011, Plaintiff presented her claims to the appropriate Federal Agency for administrative settlement under the FTCA pursuant to 28 U.S.C. §2671, et, seq.

17. By letter dated December 10, 2012, Plaintiff's claims were denied.

18. Following the death of FRANCIS J. DEVINE, a second claim was presented on or about April 4, 2014 to the VA HEALTH CENTER for the wrongful death of FRANCIS J. DEVINE.

19. By letter dated August 5, 2014, the Administrative claim was denied.

20. Defendants, their agents, servants and/or employees undertook to attend and provide medical care to Plaintiff's Decedent on or about February 2, 2010 at Defendant VAL HEALTH CENTER's facilities located at Hudson Valley Health Center, Route 9D, Castlepoint, NY 12511.

21. On February 2, 2010, when the Decedent, FRANCIS J. DEVINE, presented to Defendants, their agents, servants and employees, his colonoscopy was indicative of, and revealed, cancer.

22. Defendants, their agents, servants and employees were negligent in their treatment of Decedent, FRANCIS J. DEVINE, by, including but not limited to: failing to timely diagnose his metastatic cancer; failing to properly perform a colonoscopy; failing to properly interpret a colonoscopy; failing to order a biopsy of the Decedent's cecum/appendix.

23. The aforesaid death of the Decedent herein, FRANCIS J. DEVINE, was due to carelessness, negligence, abandonment and/or departures from accepted and proper medical,

oncological, hospital, proctological and other good practices, on the part of the defendants herein, their agents, servants and/or employees, in the care and treatment or lack thereof that was rendered to the Decedent herein, without any negligence on his part contributing thereto.

24. At the time of the death of the Decedent herein, the Decedent left surviving his next of kin, who suffered pecuniary and other losses as a result of his death.

25. As a result of the aforesaid, Plaintiff herein, JUDITH WATTS-DEVINE, and other next of kin have been damaged in the sum of money in an indeterminate amount of no less than Two Million (\$2,000,000.00) Dollars.

26. The death of FRANCIS J. DEVINE and the damages sustained by his heirs and distributees were caused by the negligence of the Defendant, its agents, servants and/or employees without any negligence on the part of the Plaintiff or the Decedent contributing thereto.

27. By reason of the foregoing, plaintiff has been damaged in an indeterminate sum of not less than TWO MILLION (\$2,000,000.00) Dollars.

**WHEREFORE**, Plaintiff demands judgment against defendant for:

- a) Damages in an indeterminate amount of no less than Two Million Dollars (\$2,000,000.00) in the FIRST CAUSE OF ACTION;
- b) Costs, disbursements, and attorneys fees; and
- c) Such other and further relief as this Court deems just and proper.

Dated: November 19, 2014  
Poughkeepsie, NY

  
By: Thomas F. Kelly, III  
KELLY & MEENAGH, LLP  
*Attorneys for Plaintiff*  
135 North Water Street  
Poughkeepsie, NY 12601  
Ph: (845) 454-4244  
Fax: (845) 454-5272  
[Tkelly@kellyandmeenagh.com](mailto:Tkelly@kellyandmeenagh.com)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JUDITH WATTS-DEVINE, as Administratrix for  
the Estate of FRANCIS J. DEVINE and JUDITH  
WATTS-DEVINE, Individually,

**CERTIFICATE OF  
MEDICAL  
MALPRACTICE**

Plaintiff(s),

-against-

UNITED STATES OF AMERICA,

Defendant(s)  
-----X

THOMAS F. KELLY, III, an attorney duly admitted to practice in the Courts of the  
State of New York and the United States District Court for the Southern District of New York  
hereby affirms under penalties of perjury:

I have reviewed the facts of this case and have consulted with at least one physician  
who is licensed to practice in this state, or any other state, and I reasonably believe that said  
physician is knowledgeable as to the relevant issues involved in this particular action and I  
have concluded on the basis of such review and consultation that there is a reasonable basis  
for the commencement of this action.

Dated: Poughkeepsie, NY  
November 19, 2014

  
THOMAS F. KELLY, III, ESQ.



DEPARTMENT OF VETERANS AFFAIRS  
OFFICE OF REGIONAL COUNSEL  
300 Poly Place, Building 14  
Brooklyn, New York 11209

CERTIFIED MAIL-R.R.R.

AUG 5 2014

In Reply Refer To: 630A-4/02-4C

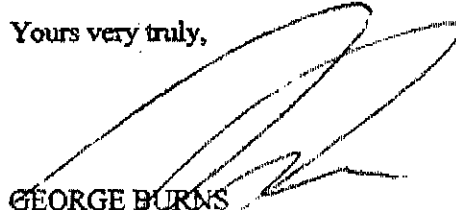
Meagher & Meagher, P.C.  
Attorneys at Law  
Attn: Patrick J. McCorley  
111 Church Street  
White Plains, New York 10601

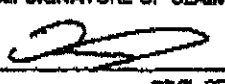
Dear Mr. McCorley:

This letter is in reference to the SF-95, Claim for Damage, Injury or Death filed by your client Judith Watts-Devine, as the administrator of the estate of the deceased veteran, Francis Devine, wherein it is alleged that the veteran suffered a wrongful death in the amount of \$500,000.00 due to the care he received at the Castle Point Campus of the VA Hudson Valley Healthcare System.

A review of this case indicates that your client filed a civil action on the same issues being raised in the current administrative claim, and asserted a cause of action for wrongful death. *See Watts-Devine v. United States*, Case No. 13 Civ. 3861 (S.D.N.Y.) (CS). By order dated January 31, 2014, the court in the civil action dismissed the complaint for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). The court rejected plaintiff's subsequent motion for relief from judgment by order dated July 10, 2014. The wrongful death claim, therefore, has already been dismissed and, accordingly, the claim being asserted here is denied.

Yours very truly,

  
GEORGE BURNS  
Regional Counsel  
Tel: (718) 630-2906  
Fax: (718) 630-2917

<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		<b>INSTRUCTIONS:</b> Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		<b>FORM APPROVED OMB NO. 1105-0008</b>	
1. Submit To Appropriate Federal Agency: V.A. Department of Veteran Affairs 810 Vermont Avenue, NW Washington, D.C. 20420		2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code) Judith Watts-Devine 5 Ruby Circle Poughkeepsie, NY 12603		Mcagher & Mcagher, P.C. 111 Church Street White Plains, NY 10601	
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 2/22/1947	5. MARITAL STATUS Widow	6. DATE AND DAY OF ACCIDENT Date of Accident: 2/2/10, Date of Death: 1/25/10		7. TIME (A.M. or P.M.)
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) Judith Watts-Devine, as Administrator of the Estate of Francis Devine makes a claim for Francis' Wrongful Death. Mr. Devine passed away on November 25, 2012, as a result of the negligence and departures from accepted standards of medical, hospital, surgical, gastrointestinal and oncological care in the care and treatment that was rendered and tendered to Francis Devine during his February 2, 2010 Colonoscopy at Veteran's Hospital, VA Hudson Valley Health Center, Route 9D, Castlepoint, NY 12511. Persons and entities involved include German, Chu-Acquino, M.D., Veterans' Hospital, VA Hudson Valley Health Center, Route 9D, Castlepoint, NY 12511.					
9. <b>PROPERTY DAMAGE</b> NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code) N/A					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.) N/A					
10. <b>PERSONAL INJURY/WRONGFUL DEATH</b> STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. Judith Watts-Devine, as Administrator of the Estate of Francis Devine, makes a claim for the wrongful death of Francis Devine on November 25, 2012 which was caused by the failure on the part of the VA, its agents servants and employees, including Dr. Chu-Acquino, in failing to diagnose Mr. Devine's cecal cancer during his February 2, 2010 Colonoscopy. The Decedent's next of kin, including Mrs. Watts-Devine, have sustained pecuniary loss as a result of Mr. Devine's death.					
11. <b>WITNESSES</b>					
NAME		ADDRESS (Number, street, city, State, and Zip Code)			
German Chu-Acquino, M.D.		Veteran's Hospital, V.A. Hudson Valley Health Center, Route 9D, Castlepoint, NY 12511			
12. (See instructions on reverse) <b>AMOUNT OF CLAIM (In dollars)</b>					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights.)		
		500,000.00	500,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)		13b. Phone number of signatory	14. DATE OF CLAIM		
 (Patrick McCorby, Manager - Medical)		(914) 328-8844	March 24, 2014		
<b>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</b> The claimant shall forfeit and pay to the United States the sum of \$2,000 plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)		<b>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</b> Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)			



### PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

**A. Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 38 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R.

**B. Principal Purpose:** The information requested is to be used in evaluating claims.  
**C. Routine Use:** See the Notices of Systems of Records for the agency to which you are submitting this form for this information.

**D. Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim

### INSTRUCTIONS

Complete all items - Insert the word NONE where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF

PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in Item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in Item 12 of this form.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations occurred may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to Director, Tort Branch  
Civil Division  
U.S. Department of Justice  
Washington, DC 20530

and to the  
Office of Management and Budget  
Paperwork Reduction Project (1105-0008)  
Washington, DC 20503

### INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☐ Yes, If yes, give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number. ☐ No

N/A

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

N/A

17. If deductible, state amount

N/A

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? It is necessary that you ascertain these facts!

N/A

19. Do you carry public liability and property damage insurance? ☐ Yes, If yes, give name and address of insurance company (Number, street, city, State, and Zip Code) ☐ No

N/A



**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, which are intended to constitute a  
durable LIMITED POWER OF ATTORNEY

That I, Judith Watts Devine, residing at 5 Ruby Circle  
Poughkeepsie NY 12603, hereby appoint MEAGHER & MEAGHER, P.C.,  
111 Church Street, White Plains, New York 10601, my attorney-in-fact to act in my name, place  
and stead in any way which I myself could do, if I were personally present, with respect to  
Section §18 of the New York State Public Health Law:

To obtain any and all medical, employment related, insurance and financial information,  
to be used strictly for litigation matters, pertaining to, Francis J. Devine  
born on 12-9-48, who reside(s/d) at 5 Ruby Circle Poughkeepsie NY 12603  
and utilize(s/d) 110-405849 as a social security number.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed my seal this  
4<sup>th</sup> day of March, 2014.

Judith Watts Devine  
Signature

Judith Watts Devine  
(Print Name)

State of New York )  
County of Westchester )

On the 4<sup>th</sup> day of March, 2014 before me personally came Judith Watts Devine to me  
known and known to me to be the individual described in, and who executed the foregoing instrument and he/she  
acknowledged to me that he/she executed the same.

Jennifer C. Patrissi  
NOTARY PUBLIC

JENNIFER C. PATRISSI  
Notary Public, State of New York  
No. 02PA8083425  
Qualified in Westchester County  
Commission Expires 12/30/14

"Jim"

Page 1 of 2

Hudson Valley Hematology-Oncology Associates  
NEW PATIENT CONSULTATION

DOB 12/9/48

DATE: 9/10/10 PATIENT NAME: Francis Devine

CHIEF COMPLAINT:

REFERRING PHYSICIAN:

61 y/o old

## HISTORY OF PRESENT ILLNESS:

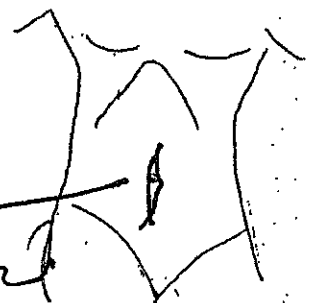
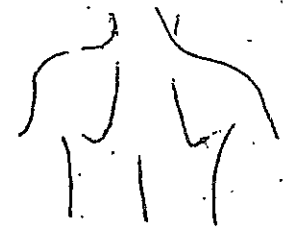
Hx of S/S

S/P Surg 8/29

→ T4M, Appendix, Colon

2 wks post surg

→ still recovering



## PHYSICAL EXAMINATION:

Height: 5'7" Weight: 152 BSA:

Vital Signs: BP 120/80

HEENT:

Neck:

Chest/Lungs:

Breast:

Cardiovascular:

Abdominal:

Back/Spine:

Extremities:

Lymph nodes:

Neurological:

Rectal:

Skin:

o bleed; on wad.

open wound

Hudson Valley Hematology-Oncology Associates  
NEW PATIENT CONSULTATION

X-RAY REPORTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LABS/PATH: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ASSESSMENT & PLAN:

Metastatic appendiceal CA  
2 weeks post op

- Plan for FOLFOX

- MUST wait 2 cycles

- ? 2nd mag IP chemo  
after systemic chemo

- PRF in 4 weeks

Signature

- Needs portback

- SAMP. CEA